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**COUNTY OF LOS ANGELES and SERGEANT TRAVIS KELLY**  
*(Defendants is exempt from filing fees pursuant to Government Code § 6103)*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA ASSIFF,

Plaintiffs,

v.

COUNTY OF LOS ANGELES;  
SHERIFF DEPUTY BADGE  
NUMBER 404532; And DOES 1  
through 10,

Defendants.

**Case No.: 2:22-cv-05367 RGK(MAAx)**

**DEFENDANTS' CORRECTED  
OPPOSITION TO PLAINTIFF'S  
MOTION TO ENFORCE SETTLEMENT**

Action Filed: August 3, 2022  
Pretrial Conference: July 10, 2023  
Trial Date: July 25, 2023

Assigned to:  
Hon. R. Gary Klausner, District Judge  
Courtroom 850

All Discovery Matters Referred to:  
Hon. Maria A. Audero, District Judge

**TO THE HON. R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE:**

Defendants submit this Opposition to Plaintiffs' Motion to Enforce Settlement  
(ECF #110, filed October 15, 2024).

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1 **I. INTRODUCTION**

2 Plaintiff's Motion to Enforce is improper, as Plaintiff cannot establish Defendants'  
3 breach or failure to comply, *actual or anticipatory*, with their obligations under the  
4 subject settlement agreement. Plaintiff's Motion also misrepresents Defendants'  
5 diligence with respect to compliance with the settlement terms, and further misrepresents  
6 defense counsel's routine communication with Plaintiff's counsel with respect to the  
7 status of settlement approval.

8 Notably, Plaintiff concedes that he knew when he agreed to dismiss this case (*by*  
9 *and through his counsel of record*) that the settlement agreement was "conditional", and  
10 "subject to the approval of the Los Angeles County Contract Cities Board and the  
11 County of Los Angeles Board of Supervisors." (Motion, ECF # 110, at 3:14-28.)  
12 Plaintiff further concedes that he knew when he signed the "formal written settlement  
13 agreement ... that the process of securing the necessary [County Board] approvals 'will  
14 take a minimum of 180 days...'" (*Id.* at 4:1-4.)

15 **II. STATEMENT OF FACTS**

16 On July 25, 2023, the parties agreed to dismiss the action, pending execution of  
17 settlement agreement and completion of settlement - in lieu of proceeding with a Trial  
18 that day. (Motion, ECF # 110, at 3:14-28.) Plaintiff returned the executed the formal  
19 Settlement Agreement on August 14, 2023. (*Id.* at 4:7-9.)

20 **A. Routine Defense Updates to Plaintiff re: Status of Settlement Approval**

21 Starting in mid-October of 2023, Plaintiff's counsel began to routinely inquire  
22 regarding the status of settlement completion with defense counsel. (Gupta Decl., ¶ 5.)

23 On December 20, 2023, defense counsel advised Plaintiff's counsel that "that the  
24 LASD continues to work on its internal review procedures which need to be completed  
25 before the matter can undergo further County review/approval." (Gupta Decl., ¶ 6.)  
26 Plaintiff's counsel immediately responded with "WTF does that mean?... Any intentional  
27 delay would be a breach of the settlement." (Gupta Decl., ¶ 6.) Upon reminder from  
28 defense counsel regarding the settlement terms pertaining to the approval process,

1 Plaintiff's counsel responded with his suspicion that Defendants have chosen to "sit on  
2 the settlement for five months." (Gupta Decl., ¶ 6.) Defense counsel immediately  
3 responded to advise Plaintiff's counsel regarding the County's requisite, "consuming and  
4 comprehensive corrective action and internal review process." (Gupta Decl., ¶ 6.)

5 In February of 2024, defense counsel advised Plaintiff's counsel that "LASD Risk  
6 Management anticipates having their internal required documentation completed in  
7 March." (Gupta Decl., ¶ 7.) However, by May of 2024, defense counsel learned that  
8 structural changes and staffing challenges at the LASD Risk Management Bureau  
9 resulted in a backlog of pending corrective action plans, and that the foregoing may  
10 cause the Bureau to be unable to complete the subject corrective action plan until June of  
11 2024. (Gupta Decl., ¶ 8.) In May of 2024, defense counsel wrote to Plaintiff's counsel  
12 to explain the backlog. (Gupta Decl., ¶ 9.) In June of 2024, defense counsel advised  
13 Plaintiff's counsel that the subject corrective action plan was anticipated to be complete  
14 within 3-4 weeks. (Gupta Decl., ¶ 10.) In August of 2024, defense counsel apologized  
15 for the unintentional delay in completion of the corrective action plan due to  
16 unanticipated backlog, and updated Plaintiff's counsel that the completed corrective  
17 action plan was being circulated for final approval. (Gupta Decl., ¶ 11.) On October 7,  
18 2024, defense counsel again updated Plaintiff's counsel that the settlement funds were  
19 anticipated to be disbursed by December of 2024. (Gupta Decl., ¶ 12.)

20 **B. The Subject Delay Was Not Anticipated at the Time of Settlement**

21 In March of 2023, the LASD Risk Management Bureau, previously under the  
22 Professional Standards Division, became part of the Office of Constitutional Policing.  
23 (Gupta Decl., ¶ 13.) At that time, a new format and structure of the Corrective Action  
24 Plans were implemented within the Department. (Gupta Decl., ¶ 13.) With said change,  
25 the format and structure of Corrective Action Plans required all earlier pending plans to  
26 be revised. (Gupta Decl., ¶ 13.) The foregoing changes structural changes, in addition  
27 to staffing challenges, resulted in a backlog of over fifteen (15) pending CAP/SCAPs  
28 and three (3) court orders. (Gupta Decl., ¶ 14.) The LASD Risk Management Bureau

1 was unable to complete the CAP/SCAP in this action prior to August 2024 due to the  
2 aforementioned backlog. (Gupta Decl., ¶ 14.)

3 However, in August of 2023, defense counsel was not aware that the foregoing  
4 structural changes and other challenges would impact the rate at which the Department  
5 would be able to complete the backlog of pending CAP/SCAPs. (Gupta Decl., ¶ 15.) At  
6 that time, defense counsel reasonably believed that the CAP/SCAP would be completed,  
7 reviewed and executed, and that the County's settlement approval process should  
8 thereafter be completed by Spring 2024. (Gupta Decl., ¶ 15.) Defendants did not intend  
9 to make any misrepresentation to Plaintiff or to the Court regarding the timeline of the  
10 completion of the settlement approval process, and any unintentional misrepresentation  
11 was due to inadvertent, *but good faith*, belief. (Gupta Decl., ¶ 16.)

12 **C. Defendants Did Not Breach the Settlement Agreement**

13 Despite Plaintiff's accusations of intentional delay and purported breach starting  
14 in December of 2023, Defendants have been working to comply with the Settlement  
15 Agreement, as established above. As part of Defendants' efforts, defense counsel  
16 routinely updated Plaintiff's counsel regarding the status of completion of the various  
17 approval steps, and advised regarding the reasons for the unintentional delay.

18 On October 8, 2024, defense counsel advised Plaintiff's counsel that the subject  
19 settlement "was approved by the [Los Angeles County] Contract Cities Claims Board on  
20 October 2, 2024," and that the "settlement is on the Public Safety Cluster Agenda  
21 Review (CAR) for November 13, 2024." (Gupta Decl., ¶ 17.) Defense counsel further  
22 advised that the settlement is anticipated "to be placed on the Board of Supervisors  
23 agenda for December 2024." (Gupta Decl., ¶ 17.)

24 During a conference with Plaintiff's counsel on October 8, 2024, defense counsel  
25 again communicated the reasons for the delay in the settlement approval process in  
26 response to Plaintiff's counsel's accusations of intentional delay. (Gupta Decl., ¶ 18.)  
27 As such, Defendants pled with Plaintiff to refrain from the subject Motion - as there was  
28

no intended breach by Defendants and the parties were at the “last steps of settlement approval.” (Gupta Decl., ¶ 18.)

### III. ARGUMENT

#### A. Plaintiff Has Failed to Show that Defendants Have Breached the Settlement Agreement

“[A] motion to enforce [a] settlement agreement essentially is an action to specifically enforce a contract.” *Adams v. Johns-Manville Corp.*, 876 F.2d 702, 709 (9th Cir. 1989). Therefore, the doctrine of substantial compliance, or substantial performance, may be employed. *Jeff D. v. Otter*, 643 F.3d 278, 283–84 (9th Cir. 2011) (internal citation omitted).

Plaintiff’s Motion is devoid of any argument that Defendants have (*actually or effectively*) breached the Settlement Agreement. Notably, Plaintiff concedes that the Settlement Agreement in this case warned Plaintiff that the requisite settlement approval process “will take a **minimum of 180 days...**” (Motion, ECF # 110, at 4:2-4 (emphasis added).) Given the foregoing express term of the Settlement Agreement, Plaintiff cannot show that completion of the settlement approval process in more than 180 days is a breach of the Settlement Agreement.

Moreover, as established above, Defendants did not, and do not, intend to effectively breach the Settlement Agreement. Rather, as shown above, Defendants have been making efforts to complete the County’s settlement approval process. The delay in completion of the settlement approval was unanticipated by Defendants at the time of the settlement, and wholly unintentional. Nevertheless, Defendants have substantially complied with the terms of the Settlement Agreement by continuing to work on the settlement approval, which is currently in the very last steps.

Based on the foregoing, Plaintiff cannot establish that Defendants have not substantially complied with the Settlement Agreement, or that Defendants are in anticipatory breach of the Settlement Agreement.

1           **B. Plaintiff's Requested Sanctions Are Improper**

2           Plaintiff's Motion concedes that sanctions are allowed where the Court finds  
3 evidence of contempt or willful breach. (Motion, ECF # 110, at 5:20-22.) Here, the  
4 parties engaged in good faith negotiation, subject to which Plaintiff agreed that  
5 settlement in this matter was contingent on County approval, was advised as to the  
6 settlement approval process, and agreed in writing that the process will take a minimum  
7 of 180 days.

8           As established above, there has been no breach, rescission, or "change of heart" by  
9 Defendants with respect to the terms of the Settlement Agreement. Instead, Defendants  
10 have worked to comply with the terms by completing the requisite settlement approval  
11 process. As such, Defendants have engaged in no "bad faith" conduct which should  
12 subject them to Court sanctions.

13           **IV. CONCLUSION**

14           Defendants (and the County) will continue to work expeditiously through the  
15 settlement approval process. As such, Plaintiff has failed to show that Defendants are in  
16 breach of the Settlement Agreement, or subject to Court sanctions. Based on the  
17 foregoing, Defendants respectfully request that this Court deny Plaintiff's Motion to  
18 Enforce, and allow the parties to continue working to realize the anticipated settlement  
19 approval.

20

21           Dated: October 30, 2024


KJAR, MCKENNA & STOCKALPER, LLP

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By:



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PATRICK E. STOCKALPER

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MOLSHREE GUPTA

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Attorneys for Defendants,

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COUNTY OF LOS ANGELES and SERGEANT  
TRAVIS KELLY

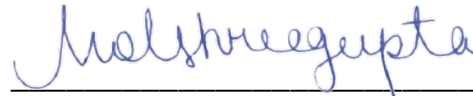
**CERTIFICATE OF WORD COUNT**

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, Defendant's Opposition to Plaintiff's Motion to Enforce Settlement is produced using 14-point Roman type including footnotes and contains approximately 1,480 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare the opposition.

Dated: October 30, 2024

KJAR, MCKENNA & STOCKALPER, LLP

By:



PATRICK E. STOCKALPER

MOLSHREE GUPTA

Attorneys for Defendants,

COUNTY OF LOS ANGELES and SERGEANT  
TRAVIS KELLY



**CERTIFICATE OF SERVICE**

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245.

On October 30, 2024, I served the foregoing document described as **DEFENDANTS' CORRECTED OPPOSITION TO PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT** on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

**By Mail** I caused such envelope(s) to be deposited in the mail at El Segundo, California. The envelope was mailed with postage thereon fully prepaid and addressed to the parties listed on the Service List. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

XX **By Email** Based upon a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in the Service List. My email address is [mnixon@kmslegal.com](mailto:mnixon@kmslegal.com).

**By Personal Service** I caused such document to be Personally Served on the parties listed in the Service List.

XX **State** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 30, 2024, at El Segundo, California.



Maria Nixon



**SERVICE LIST**

**Assiff, Joshua vs. County of Los Angeles, et al.**

Central District- Case No.: 2:22-cv-05367 RGK(MAAX)

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